

SUPERIOR COURT  
STATE OF ARIZONA  
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JEANNE HICKS, CLERK  
BY: B. Chamberlain

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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S MOTION FOR  
RECONSIDERATION OF SANCTION  
IMPOSED JULY 26, 2010 [FILED JULY  
28, 2010] AND REQUEST FOR  
EVIDENTIARY HEARING

AND

MOTION TO UNSEAL RECORDS OF EX  
PARTE PROCEEDINGS

FILED UNDER SEAL

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney,  
and her deputy undersigned, requests that this Court reconsider its "Under Advisement Ruling  
Re: Defendant's Motion to Preclude Late Disclosed Evidence from the State's 59th through  
62nd Disclosures" dated July 26, 2010 and filed July 28, 2010 ("Ruling") (Exhibit A). In  
addition to reconsideration, the State again requests that an evidentiary hearing be conducted  
regarding the payment of monetary sanctions. The State requests that such evidentiary hearing  
take place after the trial and [REDACTED] are completed.

Additionally, the State requests that the record of the ex parte proceedings that were conducted

1 on July 10, 2009 (and any other ex parte proceeding that have occurred without the State's  
2 knowledge) be unsealed. These requests are based on the following:

3 **Motion for Reconsideration**

4 The State incorporates by reference its June 21, 2010 Response to Defendant's  
5 Supplemental Request Regarding Sanctions ("Response") (Exhibit B). In its Response the  
6 State requested an evidentiary hearing be held in the event monetary sanctions were awarded.  
7 Without addressing the State's request for an evidentiary hearing, Judge Lindberg determined  
8 that \$850.00 in "additional incremental costs" should be paid directly to John Sears "for  
9 distribution as defense team deems appropriate."  
10

11 The order is unclear regarding what the "additional incremental costs" comprise, i.e.,  
12 whether these costs are to reimburse Defendant for attorney's fees, expert witness fees, travel  
13 reimbursement or other miscellaneous costs as originally requested by Defendant. Without this  
14 explanation, the propriety of the Court's order is left to question, mainly because the Court  
15 conducted an ex parte proceeding without the State's knowledge. Because the State does not  
16 currently possess the appropriate information, it is simply unable to determine from the Court's  
17 Ruling what the "additional incremental costs" represent. That is important because the  
18 taxpayers of Yavapai County may have already paid for these "additional incremental costs"  
19 and the \$850.00 sanction would therefore be wholly inappropriate under that circumstance.  
20

21 Most importantly, the State questions the propriety of paying any money [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

1 undermines the very concerns expressed [REDACTED] The State believes an  
2 evidentiary hearing conducted after the trial and [REDACTED] both completed is  
3 the best answer to all the issues raised in this dual motion (see below).

4 **Motion to Unseal Ex Parte Proceedings**

5 An additional consideration for this entire matter relates to the July 10, 2009 ex parte  
6 hearing held between Judge Lindberg and the defense team without prior knowledge of the  
7 State. Upon information and belief, Judge Lindberg conducted an ex parte hearing in which he  
8 found Defendant to be indigent. Judge Lindberg conducted this ex parte proceeding without  
9 proper notice to the State or the victims. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 Defendant's behalf for the period July 10, 2009 through April 16, 2010. If the County is  
16 already paying for Defendant's costs and fees, the ordered \$850.00 should be reimbursed to the  
17 County, not to Mr. Sears and members of the defense team.

18 There are several problems with this situation. The first is that the propriety of an ex  
19 parte hearing relating to defendant's indigency and requests for payments of costs and/or fees  
20 is called into question by both *State v. Apelt*, 176 Ariz. 349, 861 P.2d 634 (1993) and the  
21 recent case of *Morehart v. Barton*, --- P.3d ---, 2010 WL3177885 (App. August 12, 2010).  
22 Not to mention the fact that a determination of indigent status is a public matter under Rule  
23 6.4 of the Rules of Criminal Procedure. No explanation has been provided as to why such a  
24 matter is appropriately heard ex parte. Additionally, this ex parte hearing appears to have  
25  
26

1 been conducted in violation of E.R. 3.5 of the Rules of Professional Conduct and Rule 2.9 of  
2 Canon 2 of the Canons of Judicial Conduct.

3 If this ex parte hearing is alleged to have been conducted under the authority of Rule  
4 15.9 of the Arizona Rules of Criminal Procedure, then the appropriate steps were not  
5 followed as specifically outlined in the Rule. In subsection (b), it provides that there will not  
6 be any ex parte proceeding "unless a proper showing is made concerning the need for  
7 confidentiality." As demonstrated in the *Morehart* decision, that "proper showing" is not  
8 done ex parte, but rather with the State and victims having input. This important step in the  
9 process was skipped entirely, resulting in the violation of Rule 15.9, which necessarily means  
10 E.R. 3.5 and Canon 2 were violated by counsel and Court, respectively.

11 This situation must be remedied without further delay. The bottom line is that all  
12 proceedings in this matter that have proceeded ex parte must be unsealed by this Court.  
13 Because the records of the July 10, 2009 ex parte proceeding in particular will likely shed  
14 further light on the situation regarding the financial sanction in this case and this hearing was  
15 improperly conducted without the State being present, the State moves that this hearing in  
16 particular, and all other unknown ex parte proceedings in general, be unsealed.  
17  
18

19 **Conclusion**

20 The State requests that this Court unseal all ex parte proceedings in this matter.  
21 Additionally, the State requests that this Court reconsider its Ruling and, after conclusion of the  
22 trial and [REDACTED] conduct an evidentiary hearing regarding the propriety of the  
23 State paying Mr. Sears or members of his defense team any sum of money whatsoever given  
24 the circumstances that exist at this time.  
25  
26

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RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of September, 2010.

Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

By: Dennis M. McGrane  
Dennis M. McGrane  
Chief Deputy County Attorney

COPIES of the foregoing delivered this  
8th day of September, 2010 to:

Honorable Thomas B. Lindberg  
Division 6  
Yavapai County Superior Court  
(via email)

Honorable Warren Darrow  
Acting Division 6  
Yavapai County Superior Court  
(via email)

John Sears  
511 E. Gurley St.  
Prescott, AZ 86301  
Attorney for Defendant  
(via email)

Larry Hammond  
Anne Chapman  
Osborn Maledon, P.A.  
2929 North Central Ave, 21<sup>st</sup> Floor  
Phoenix, AZ  
Attorney for Defendant  
(via email)

By: Dennis M. McGrane

W/O

**SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI**

<b>STATE OF ARIZONA</b> (Plaintiff)  vs.  <b>STEVEN CARROLL DEMOCKER</b> (Defendant)	<b>Case No. P1300CR20081339</b>  <b>UNDER ADVISEMENT RULING</b> <b>Re: Defendant's Motion to</b> <b>Preclude Late Disclosed</b> <b>Evidence from the State's 59<sup>th</sup></b> <b>through 62<sup>nd</sup> Disclosures</b>	<b>FILED</b> <b>DATE: JUL 28 2010</b> <b>4 O'Clock P M.</b> <b>JEANNE HICKS, CLERK</b> <b>BY: SHEETAL PATEL</b> <b>Deputy</b>
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<b>HONORABLE Thomas B. Lindberg</b>	<b>BY: Robin Gearhart / Judicial Assistant</b> <b>Division Six</b>
<b>DIVISION SIX</b>	<b>DATE: July 26, 2010</b>

On April 15, 2010, State of Arizona filed State's 59<sup>th</sup> Supplemental Disclosure; April 16, 2010 State's 60<sup>th</sup> Supplemental Disclosure; and April 21, 2010 State's 61<sup>st</sup> and 62<sup>nd</sup> Supplemental Disclosures. On April 30, 2010, Defendant, through counsel, filed a Motion to Preclude Late Disclosed Evidence, Witnesses and Exhibits from the State's 59<sup>th</sup> through 62<sup>nd</sup> Disclosures.

At a hearing on May 11, 2010, the Court heard argument with regard to Defendant's Motion, specifically Section 6: Sorenson, and took the matter *under advisement*. The Court advised it will consider what sanction to impose, which may include a reimbursement of the Defense expert's costs. In addition, the Court directed Defense Counsel to provide the Court with information regarding the Defense expert's expense in going to Sorenson and being present for the testing.

Subsequent to above, additional Motions were filed by the State and Defense which have been reviewed by the Court.

This Judge, Honorable Thomas B. Lindberg, has pendant jurisdiction regarding the *under advisement* issue of financial sanctions though the case has now been assigned to the Honorable Warren R. Darrow.

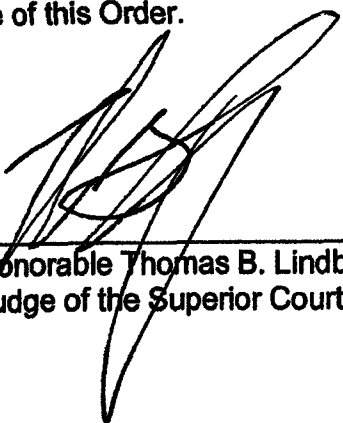
The full costs of defense attorneys and experts are not awarded since the costs were to be expended in any event; but additional incremental costs were sustained by the failure of the State/County Attorney's Office, or agents, to follow the Orders of the Court regarding handling of scientific evidence.

JUL 28 2010

Thus, in addition to other sanctions considered,

**IT IS HEREBY ORDERED** the Yavapai County Attorney shall pay to Defendant, via the offices of John M. Sears, the amount of \$850.00 for distribution as defense team deems appropriate. Such payment to be made within forty-five (45) days from date of this Order.

DATED: This 26<sup>th</sup> day of July, 2010.

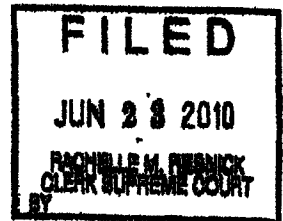


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Honorable Thomas B. Lindberg  
Judge of the Superior Court / Division 6

*Attachment (Certification)*

cc: Joseph C. Butner III, Esq., Office of the Yavapai County Attorney (via facsimile to 928-771-3110)  
John M. Sears, Esq., 107 North Cortez Street, Suite 104, Prescott, Arizona 86301 (via facsimile to 928-445-1472)  
Larry A. Hammond, Esq., Anne M. Chapman, Esq., Osborn Maledon, P.A., 2929 North Central Avenue, 21<sup>st</sup> Floor, Phoenix, Arizona 85012-2793 (via facsimile to 602-640-6076)  
Dean Trebesch, Contract Administrator, Office of the Yavapai County Public Defender (via facsimile to 928-771-3413)  
Victim Services: Attn. Marie Martinez



### CERTIFICATION

As Chief Justice of the Supreme Court of Arizona, pursuant to A.R.S. § 12-128.01, I hereby certify to the following regarding The Honorable Thomas B. Lindberg, Judge, Superior Court in Yavapai County.

Judge Lindberg has requested that application of A.R.S. § 12-128.01 be excused in the following currently pending and undetermined matters:

*State v. Steven Carroll DeMocker*  
P1300CR20081339

*State v. Ray David Villegas-Munoz*  
P1300CR20081137

*State v. Shawn Christian Reel*  
P1300CR20090148

Judge Lindberg advises that due to a serious medical emergency that occurred on June 17, 2010, he is requesting an extension to the 60-day Rule.

I find that the reason provided by Judge Lindberg constitutes good and sufficient cause for excusing the application of A.R.S. § 12-128.01.

This certification shall remain in effect until August 23, 2010.

Dated this 23<sup>rd</sup> day of June, 2010.

  
REBECCA WHITE BERCH  
Chief Justice

cc: Hon. Robert M. Brutinel, Presiding Judge, Superior Court in Yavapai County  
Hon. Thomas B. Lindberg, Judge, Superior Court in Yavapai County  
Jeanne Hicks, Clerk of the Court, Superior Court in Yavapai County  
Don Bentley, Financial Officer, Finance, Administrative Office of the Courts  
Payroll, Administrative Office of the Courts  
Yavapai County Finance Department – Payroll



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FILED

B. Chamberlain

DEPUTY CLERK

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S  
 SUPPLEMENTAL REQUEST  
 REGARDING SANCTIONS DATED JUNE  
 10, 2010

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby responds to Defendant's Supplemental Request Regarding Sanctions dated June 10, 2010. The State incorporates its previous responses where applicable on the issues presented herein, and specifically its Response to Defendant's Motion to Strike the Death Penalty filed May 25, 2010.

MEMORANDUM OF POINTS AND AUTHORITIES

On May 14, 2010 Defendant filed his original request for sanctions regarding the evidence specific to this Supplement (see "Motion to Strike the Death Penalty or in the Alternative to Preclude Evidence and for Other Sanctions Based on Destruction of Biological Evidence, False Reporting of Biological Evidence Results and Defiance of this Court's Orders" filed May 14, 2010). The alleged disclosure violations set forth in this particular motion were

1 that (1) the State failed to diligently conduct biological testing; (2) Sorenson Laboratory  
2 swabbed the handle bars and sides of the seat of Defendant's bicycle and consumed the swab  
3 without Defendant's knowledge or a Court order; and (3) an error was made in one of the  
4 Sorenson Laboratory reports which did not come to light until defense counsel interviewed the  
5 expert.

6  
7 If the Court found that a discovery violation occurred, Defendant's requested relief was  
8 (1) dismissal of the death penalty; (2) precluding testimony about this testing on Defendant's  
9 bicycle; and (3) a *Willits* instruction on the consumptive testing. *Id.* at 11. Defendant stated  
10 that imposing a sanction of costs was insufficient for these alleged disclosure violations. *Id.*  
11 However, he stated that if the Court was inclined to consider imposing costs, Defendant wanted  
12 reimbursement for (1) all of [REDACTED] (2) costs and expenses for counsel to prepare for  
13 and conduct the Sorenson interviews; (3) travel to Salt Lake City to perform the Sorenson  
14 interviews; and (4) counsel's time in litigating the issues. *Id.*

15  
16 On May 25, 2010 the State responded that (1) the parties and the Court are aware that a  
17 number of items have been biologically tested over the last several weeks, some pursuant to  
18 Court order; (2) the State authorized Sorenson Laboratory to conduct consumption testing of  
19 one bicycle swab but there remained hundreds of places available on the bicycle for serology  
20 testing; and (3) the error in the Sorenson Laboratory report was exculpatory and Defendant was  
21 not prejudiced by the error.

22  
23 On May 26, 2010 the State withdrew its allegation of the death penalty.

24 A hearing was held on May 28, 2010 on the motion for sanctions. The Court found that  
25 the consumption of the swab without first notifying the defense or obtaining permission of the  
26 Court was in violation of the Court's previous order. TR 5/28/10 at 19. The Court held that

1 such consumption was a discovery violation and precluded the use of that testing in trial. Id.  
2 The Court did not find any late disclosure violation or that the error in the lab report was  
3 sanctionable. Id. at 19-20. The Court took Defendant's request for financial sanctions under  
4 advisement. Id. at 20. The instant Supplement and this Response are directed to the matter of  
5 financial sanctions.

6  
7 A. Defendant did not believe monetary sanctions were appropriate under the  
8 circumstances.

9 In the event the Court found a discovery violation by the State, Defendant's first  
10 requested sanction was a dismissal of the death penalty. (5/14/10 Motion at p. 11) The State  
11 on its own motion did withdraw the death penalty allegation. Defendant's second request was  
12 that any reference to the bicycle testing be precluded. The Court ordered that the test results  
13 were precluded. Defendant's third request was that a *Willits* instruction be given regarding the  
14 consumption of the swabs. All evidence from the bicycle has not been lost and is available for  
15 Defendant's use if he so desires. A *Willits* instruction is not appropriate. Defendant stated that  
16 imposing sanctions of costs was an insufficient sanction for any disclosure violation. However,  
17 after getting exactly what he wanted for the one found violation, he now wants more.

18  
19 B. Defendant now wants \$50,000 in monetary sanctions for the consumption of a  
20 bicycle swab that could be recreated by Defendant's expert at any time.

21  
22 For the Court's convenience, set forth below is the applicable portion of the State's  
23 Response regarding the consumption of the bicycle swab.

24 According to an interview of administrative lead, Dan Hellwig of  
25 Sorenson Laboratory conducted on May 24, 2010, the subject bike was  
26 delivered to them on or about February 17, 2010 by Captain Rhodes. On  
February 18, 2010 a meeting involving Captain Rhodes, Dan Hellwig and  
Carma Smith was held and memorialized in case notes from the Sorenson file.  
Although the bike was now in the custody of Sorenson Laboratory, no

1 decision was made at this time to conduct DNA testing on it. ... In fact,  
2 according to Mr. Hellwig's recent interview, he did not believe any further  
3 testing was going to be conducted on the bike.

4 On or about March 31, 2010 a serology test consisting of the swabbing  
5 of the handle bars and the sides of the bike seat was done. This swabbing was  
6 done outside of the presence of defense's observer [REDACTED] Mr. Hellwig  
7 stated there was no attempt to keep the serology test from [REDACTED] He  
8 explained that since they were not conducting consumption testing of the  
9 swabs from the bike, it did not fall under the underlying court order. He  
10 stated the serology test done on specific areas of the bike was done so he  
11 could return the large evidence item bike back to Captain Rhodes. Captain  
12 Rhodes was at the Sorenson Laboratory as the State's observer while the  
13 consumption testing was been conducted. Captain Rhodes had no  
14 involvement in the Sorenson Laboratories decision to perform a serology on  
15 the bike.

16 The swab from the bike was stored in Sorenson's freezer. On or about  
17 April 8, 2010 the State authorized Sorenson Laboratory to conduct  
18 consumption testing of the swab for possible Y-STR DNA. The DNA tests on  
19 the swab were not conducted in secret nor were they conducted while [REDACTED]  
20 [REDACTED] was at the lab.

21 While the individual swab was consumed, not all areas of the  
22 handlebars or the seat or all of the other surfaces of the bike were swabbed for  
23 biological material. If it is Defendant's claim that he is somehow precluded  
24 from conducting independent DNA testing on the bike because the State  
25 consumed the one swab, this contention is without merit. There are literally  
26 hundreds of places available on this bike for serology testing.

[REDACTED] purpose was to observe testing on swabs where all the  
biological material available would be consumed. Clearly, this is not the  
case with the bike. Obviously, Defendant's claim that the State consumed all  
of the biological evidence from Evidence Item 400 (Defendant's mountain  
bike) in defiance of the Court's Order is untrue.

5/25/10 Response at pp. 3-4 (emphasis added).

1 In this Supplement, Defendant requests \$49,230.31 in monetary sanctions which he  
2 alleges flows from the one discovery violation found by the Court. His argument cannot be  
3 viewed in good faith.<sup>1</sup>

4 Defendant requests reimbursement of \$7,070.46 for the costs associated with defense  
5 observer [REDACTED] to travel to Salt Lake City and observe scientific testing which involved  
6 the consumption of the collected evidence. As noted on page 6 of Defendant's May 14, 2010  
7 Request for Sanctions, [REDACTED] was present for three days of DNA testing at the Sorenson  
8 Laboratory in Salt Lake City commencing March 30, 2010. He specifically states that "[m]any  
9 items of evidence were examined during these days ... including the fingernails, the telephone,  
10 the door handle, hair from the victim's shorts, etc." Id. at lines 15-18. Defendant shamelessly  
11 requests full reimbursement for all of [REDACTED] expenses even though she performed all of  
12 the obligations for which she was hired. [REDACTED] did not travel back to the Sorenson Lab to  
13 observe the consumption of the bicycle swab which was performed days after she left Salt  
14 Lake City. No additional costs were incurred by [REDACTED] due to the consumption.

15 Defendant also requests to be reimbursed \$40,143.00 for 99.1 hours (\$405.00 per hour)  
16 spent on trial preparation interviews of the Sorenson Laboratory employees and experts.  
17 Defendant admits that the time spent included time spent with defense experts, review of  
18 Sorenson materials, preparation for interviews and travel. Defense counsel would have  
19 incurred that time whether or not the State mistakenly authorized Sorenson Laboratory to  
20  
21  
22  
23

24 <sup>1</sup> Good faith. Good faith is an intangible and abstract quality with no technical meaning or statutory definition,  
25 and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to  
26 defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own  
mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone. Honesty of  
intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An  
honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of  
law, together with absence of all information, notice, or benefit or belief of facts which render transaction  
unconscientious. Black's Law Dictionary, Abridged Fifth Edition, 1983, West Publishing Co.

1 consume the swab of the bicycle. Similarly, the \$2,036.85 incurred in travel expenses for these  
2 two attorneys would have been expended in any event.

3 C. The maximum monetary sanction available under the facts is a small fraction of  
4 that requested.

5 If Defendant is entitled to monetary sanctions, it should be limited to the approximate  
6 15 minutes to one-half hour one defense counsel spent interviewing the Sorenson employees  
7 regarding their decision to obtain the swab and the State's authorization to consume it. It is  
8 noted that at no time did the State attempt to "hide the ball" from Defendant and no fees can be  
9 associated with trying to "get to the bottom" of the matter.

10 In *State v. Meza*, 203 Ariz. 50, 50 P.3d 406 (App. 2003) the defendant was entitled to  
11 restitutionary monetary sanctions to alleviate costs undertaken due to discovery violations. The  
12 defendant was entitled to certain costs because a state expert intentionally gave false testimony  
13 regarding the deletion of ADAMS database results for the calibration checks of the Intoxilyzer  
14 5000 machine used to determine the defendant's alcohol concentration. The expert claimed  
15 that he was unaware that test results could be deleted from the ADAMS database, when he in  
16 fact had personally deleted several such results. 203 Ariz. at 52, ¶ 5, 50 P.3d 409. The Court  
17 of Appeals found that it was "apparent that hundreds of hours of time, with commensurate  
18 costs, were wrongfully thrust upon [the defendant] and his counsel by the State" for failing to  
19 disclose the deleted test results. 203 Ariz. at 58-59, ¶ 38, 50 P.3d at 415-16. The case was  
20 remanded "with instructions to the trial court to assess, as an additional discovery sanction, the  
21 reasonable costs and fees that the defense has incurred as a consequence of the sanctionable  
22 conduct of the State." 203 Ariz. at 59-60, 50 P.3d at 416-17.  
23  
24  
25  
26

1 In this case, Defendant requests reimbursement for fees and costs not associated with  
2 the State's authorization to consume a swab. Rather, he requests reimbursement for all costs  
3 associated with an effective defense attorney's normal obligations to review evidence and  
4 interview experts prior to trial. His request for \$50,000.00 based upon the facts of this case is  
5 unconscionable, lacks in good faith, and is sanctionable conduct in and of itself.

6  
7 **CONCLUSION**

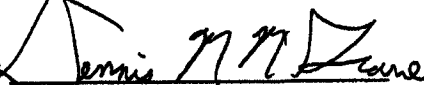
8 The State's authorization of the consumption of the bicycle swab was not done to obtain  
9 any advantage over Defendant. There remained hundreds of places available on the bicycle for  
10 serology testing. If it was done in violation of the Court's order, it was unintentional.

11 Nevertheless, the Court did find that the State violated its previous order, and the State  
12 accepts its order precluding it from introducing evidence of the testing if the trial continues as  
13 scheduled.

14 The \$50,000 Defendant requests in monetary sanctions for consumption of the swab,  
15 however, bears no relationship to the found discovery violation. Defendant's request should be  
16 denied without further argument.<sup>2</sup>

17  
18 **RESPECTFULLY SUBMITTED** this 21st day of June, 2010.

19  
20 Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

21  
22 By:   
Dennis M. McGrane  
23 Chief Deputy County Attorney

24 ...

25  
26 <sup>2</sup> Should the Court determine monetary sanctions are appropriate, a hearing will need to be held to determine to whom the money should be paid as it is believed that the taxpayers of Yavapai County are paying defense attorney fees at this point in time.

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 COPIES of the foregoing delivered this  
2 21st day of June, 2010 to:

3 Honorable Thomas J. Lindberg  
4 Division 6  
5 Yavapai County Superior Court  
6 (via email)

7 John Sears  
8 511 E. Gurley St.  
9 Prescott, AZ 86301  
10 Attorney for Defendant  
11 (via email)

12 Larry Hammond  
13 Anne Chapman  
14 Osborn Maledon, P.A.  
15 2929 North Central Ave, 21<sup>st</sup> Floor  
16 Phoenix, AZ  
17 Attorney for Defendant  
18 (via email)

19 By:   
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